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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 135

ROBERT MAXWELL WATTS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 367-372) is reported at 212 F. 2d 275.

JURISDICTION

The judgment of the Court of Appeals was entered April 16, 1954. (R. 373.) On May 10, 1954, Mr. Justice Clark signed an order extending the time for filing a petition for a writ of certiorari to June 15, 1954. The petition was filed June 14, 1954. The jurisdiction of this Court is invoked

under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether the trial court instructed the jury properly on the necessity of finding wilfulness.

2. Whether, under the circumstances of this case, it was proper to instruct the jury that, if they found a substantial understatement of taxable income, an additional tax would follow as a matter of law.

3. Whether the Government's net worth computation, which simply corroborated the amount of unreported income established by proof of specific items, was properly admitted in evidence.

4. Whether the specific instruction concerning the amount of capital gain on the house at 901 Security Street was correct in the light of the evidence and the theory of the defense at the trial.

5. Whether the trial court erred in not instructing the jury specifically that the indictment was not evidence of guilt.

6. (a) Whether the trial court should have given a specifically requested instruction on the nature of circumstantial evidence.

(b) Whether the jury were sufficiently instructed as to the essential elements of the offense.

(c) Whether the instruction on reasonable doubt was erroneous.

STATUTE INVOLVED

INTERNAL REVENUE CODE:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 145.)

STATEMENT

On February 11, 1953, an indictment was filed in the United States District Court for the District of Colorado charging petitioner with a wilful attempt to evade and defeat part of his income taxes for the year 1946, in violation of Section 145(b) of the Internal Revenue Code. It was alleged that petitioner filed a fraudulent return stating his net taxable income to be $3,116.69 on which a tax

of $404.38 was due, whereas he knew that his income was $27,850.81 and his tax, $10,704.12. (R. 6-7.) After a jury trial, petitioner was found guilty as charged (R. 8), and on June 29, 1953, he was sentenced to imprisonment for two years and fined $5,000 (R. 8-9). The Court of Appeals affirmed the conviction. (R. 373.)

The evidence at the trial may be summarized as follows:

Petitioner is a building contractor. (R. 100, 141-142.) He carried on a large part of his business activities through two corporations, the Pueblo Housing Corporation of Pueblo, Colorado, and the Moffat County State Agency Company of Craig, Colorado, in each of which he owned approximately half the stock. (R. 43-45, 47-49.) In addition, he built houses for the corporations in his individual capacity. (R. 46-48.) Possessing a college degree, he showed himself thoroughly familiar with his books. (R. 132, 142.) He kept his own records and those of the corporations, and he prepared his own income tax returns. (R. 43, 47, 92, 95-96, 142-148.) The returns were prepared on a cash basis. (R. 65, 99.)

When Revenue Agent Dempsey began an audit of the 1946 return, he asked petitioner for all pertinent books and records. (R. 64, 87.) Petitioner produced two check registers, the one recording receipts and expenses in connection with his business dealings in Craig, the other containing similar records for Pueblo. (R. 64-65.) Explaining

that the figures in the 1946 return were taken from these two check registers, he also produced a work sheet (Govt. Ex. 32) on which he had assembled the receipts and expenses from the check registers. (R. 64-65, 73-74, 87, 307.) The agent spent three or four weeks examining the records and his questions ultimately brought to light the existence of two additional books of account, a ledger for Pueblo business, and a ledger for Craig business. (R. 67, 69, 229-231.) A number of specific instances were discovered in which petitioner had received income but had not reported it in his return. In some instances the item, although recorded in one of the check registers as a receipt, had been omitted from the summary in the work sheet. In others, items recorded in the ledgers did not appear in either of the check registers or in the work sheet. In one instance, petitioner had reduced his capital gain on a house (901 Security Street in Pueblo) by offsetting expenses which he had already claimed as a deduction in a prior year. (R. 66-74, 85-86.) The total of the omitted items of income was in the neighborhood of $25,000. (R. 130-132.)

Many of these omitted items were entered in the check registers or ledgers in such a manner as to make it exceedingly difficult to determine that they were actually income. (cf. R. 214-216.) For example, payments amounting to $3,000 received from the Pueblo Housing Corporation, although recorded in the proper check register, had been omitted from the work sheet and had been entered in the Pueblo ledger as repayments of debenture

bonds. In reality, they were payments for construction work. (R. 44-45, 66, 68-69.) Again, petitioner bought a Dodge automobile from one Duncan for $1,433.07. He had Morgan and Terrill, for whom he was doing construction work, write a check in this amount payable to Duncan. He then entered the transaction as a $1,500 credit to Morgan and Terrill, but in the Craig ledger only, and in such a manner that it could not be identified as income without further explanation. (R. 31-38, 70-71.) In another instance, the Moffat County State Agency Company owed petitioner about $12,711.39 under construction contracts. The corporation assumed a debt which petitioner owed to Bieser, an associate in that enterprise, and credited itself with a $4,000 payment on his construction account. About the same time the corporation issued 85 shares of its stock to petitioner and credited itself with an additional $8,500 payment on the construction account.[1] Petitioner entered those transactions in his Craig ledger, not as income, but simply as changes in assets and liabilities, and they were not reflected in either of the check registers or in the work sheet. (R. 48-52, 58-59, 71-73, 86, 108-114.) There were two or three other instances in which income was similarly recorded. (R. 40-42, 69-70, 106-107, 117, 131-132.)

Petitioner's explanations to the revenue agents

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[1] The corporation had actually assumed debts in the amount of $10,000 owing by petitioner to Bieser, and Bieser also received 85 shares of stock which he paid for by cancelling $8,500 of the assumed debts. (R. 49, 51, 113-114.)

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during the investigation were not consistent. After first stating that his returns were made up from the check registers alone, he later claimed that he had also used the ledgers. (R. 65, 96, 178-179, 231.) He stated that the $3,000 received from the Pueblo Housing Corporation represented a redemption of debenture bonds. Only after the ledger for that company had come to light did he admit that it represented payment for construction work. (R. 66, 68-69, 114-115.) He told the agent that he had received the Dodge automobile from Morgan and Terrill, that he had never obtained a license for it, and that he intended to report it as income when he sold it.[2] Later, he admitted that the car had been purchased from Duncan, but said that he had obtained the money from Morgan and Terrill, because they were slow in paying their bills. Eventually it developed that Morgan and Terrill paid him regularly and promptly, that he had obtained a license shortly after he purchased the car, and that his wife began to use it immediately. (R. 26-27, 70-71, 115-117, 131, 172-173.) When asked to explain why he appeared to use the original cost of the house at 901 Security Street as a base in determining his capital gain on the sale although he had already taken it as a deduction in a previous year, petitioner stated that he built the house as one of a group to be sold to the Pueblo Housing Corporation, that he deducted the costs in prior years as the houses were completed, that he ultimately re-

[2] The car was purchased in 1946. The investigation was conducted in 1950.

tained the house instead of selling it to the corporation, and that he had simply "overlooked" the fact that he had already claimed the cost as a deduction. (R. 67-68, 102-104, 130.) At the trial, as will be seen, his account of this last transaction was somewhat different.

Petitioner's explanation of the manner in which his return for 1946 was prepared is of special interest. Although he had received a month's extension, the return was filled out on the last night. (R. 163.) He told the agent that after he had listed the receipts and expenses of his contracting business on the work sheet (Gov't. Ex. 32, R. 307), the figures showed a loss—$58,270.88 in receipts and $63,930.85 in expenses—and he realized that something was wrong.[3] Consequently, he attempted to reconstruct his closing inventory, and after much erasing and juggling on the work sheet he arrived at a figure of $13,894.35 which, when subtracted from his expenses, and leaving receipts as they were, gave him a net income approximately equal to the amount already reported in his withholding and estimated tax returns.[4] He said that he knew the result was incorrect, but that he felt he was actually reporting more than he had made and intended to file an amended return later. (R. 82-83,

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[3] He was building houses for the Moffat County State Agency Company during 1946 on a contract calling for cost plus ten per cent, and he was making a side profit on the lumber used. (R. 136-137, 236-237.)

[4] The figures in question are circled in ink at the left lower corner of Government Exhibit 32. (R. 307.)

133-134.) He admitted that he had received all the items of income about which he was being questioned, and he admitted that they had not been reported in his return. His explanation was that he did not think the 85 shares of stock in the Moffat County State Agency Company was income, and that he had simply "missed" the other items when preparing his return. (R. 130-132.)

At the trial, however, petitioner gave a different explanation of what happened when he prepared the return. He denied that the figures at the bottom of the work sheet represented inventory.[5] (R. 158-162, 175, 178-179.) He testified that, after realizing that the loss indicated by the assembled receipts and expenses on his work sheet could not be correct, he hastily went through his books again and found some items of income that he had missed. Not having time to go back and make corrections, he made a rapid calculation of these items, jotted down the figures at the bottom of the work sheet, arrived at a total of $13,894.35, and then subtracted this from his expenses instead of adding it to the receipts. He testified that practically all the items involved here were included in this figure, with the exception of the 85 shares of Moffat County stock and the capital gain on the house at

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[5] Most of the figures that went to make up the total of $13,984.35 were the same as the inventory figures in the Craig ledger for the close of 1946. Furthermore, petitioner submitted a financial statement to a bank showing substantially the same amount of inventory as of that date. (R. 158-162, 273.)

901 Security Street in Pueblo. (R. 149-150, 176, 177-179, 182-183.) He explained that he had not reported the shares of stock as income because he believed they had no ascertainable market value.[6] (R. 156.) As to the capital gain on the house, while not denying that he had deducted the construction cost in a prior year and admitting that he had never transferred the house to the corporation, he claimed that he had acquired the lot from the corporation in 1943 and that it constituted income to him in that year.[7] (R. 151-152, 176-177, 184-185.)

In addition to the financial statement previously referred to,[8] which summarized petitioner's assets and liabilities as of January 1, 1947, the Government introduced four similar statements dated re-

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[6] There was definite testimony for the Government that these shares had a market value of $8,500 (R. 50-52, 62), and petitioner himself, in the financial statement referred to in the previous footnote, placed a market value of $13,500 on them (R. 114, 275). Petitioner's statement (Pet. 5, 10) that the corporation was heavily in debt is inaccurate. The corporation's only creditors were petitioner and his associate Bieser and these obligations were extinguished by the issuance of stock to them. (R. 58-63, 124-125; and see *supra*, p. 6.)

[7] Corkish, petitioner's associate in the Pueblo corporation, was called as a witness for the Government and testified that petitioner credited the corporation in the amount of $6,000 when he took title to the property. Corkish, however, had posted bond for petitioner pending the trial and later testified in his behalf as a reputation witness. (R. 43-44, 46, 139.) Corporation records which would have shown whether such a credit was granted were not available. (R. 184, 225.) The stamps on the deed indicated that the consideration was only $1,000. (R. 44, 184-185.)

[8] See footnotes 5 and 6, *supra*, pp. 9-10.

spectively, August 17, 1943, March 15, 1944, April 28, 1945, and April 20, 1946. (R. 15, 273-291.) A comparison of the statement of April 20, 1946, with that of January 1, 1947, reveals an increase in net worth of approximately $27,500. This total is slightly less than the sum of the unreported specific items of income (R. 130-132) plus the net income reported by petitioner in his 1946 return. (R. 269).

ARGUMENT

1. Petitioner's first contention (Pet. 2, 9-12) is that his defense to the charge of wilful evasion of taxes was in large measure based upon honest misunderstanding of the law, and that the trial court erred in refusing to grant three requested instructions pertinent to that defense and in so charging the jury as in effect to eliminate the issue of wilful intent. Of the requests, No. 8 would have instructed the jury generally that the element of wilfulness prescribed by Section 145(b) of the Internal Revenue Code (*supra*, p. 3) consists in a wrongful intent to evade a known obligation, as opposed to a genuine misunderstanding of the law (R. 259); and No. 11 applied this principle specifically to *all* the items of income involved (R. 260). The third request, No. 10, was a general direction to the jury to acquit if they found that petitioner was unaware that an additional tax was owing when he filed his 1946 return. (R. 260.) The court's charge (R. 245-250), when read as a whole, adequately defined the element of wilful intent in the

light of the issues raised by the evidence in this case.[9]

The major portion of the charge dealing with wilfulness was as follows (R. 245-246):

> * * * if the Government has here produced evidence which you believe satisfies your minds beyond a reasonable doubt that he knowingly and wilfully omitted items of income on his return in an attempt to defeat and evade collection of his income tax, and if you find as I have indicated that he understated his income substantially, his tax substantially, then you should return a verdict of guilty.
>
> I have used the term "wilfully", ladies and gentlemen of the jury. By "wilfully" I mean with a wrongful intent, for a bad purpose, as distinguished from mere inadvertence, oversight, or mistake. If you are satisfied by the evidence that he knew what he was about, was aware of what he was doing, that he nevertheless went ahead and did it, for the purpose of understating his income, then you may find that what he did was done wilfully.[10]

This instruction was adequate on the subject of "mistake", and the court's omission of petitioner's

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[9] The trial court did not, as petitioner states (Pet. 7, 11), refuse the requested instructions. The court noted in each instance that the request would be covered in substance. (R. 259, 260.) At the conclusion of the charge, the defense objected that its request No. 11 had not been covered, but made no reference to Nos. 8 or 10. (R. 255.)

[10] The charge also refers to intent and wilfulness at several other places. See R. 246, 247, 248.

request No. 11 was justified, particularly in the light of the fact that the theory of the defense at the trial was not, as is now asserted, based almost wholly on mistake in failing to include the challenged items. On the contrary, although petitioner's explanations during the investigation were based on mistakes in that he then stated that he had simply overlooked *most* of the items involved, his testimony at the trial was that they had actually been *included* in the return by the $13,894.35 total which he "plugged" in at the bottom of the work sheet, after realizing, too late to make corrections, that his original summary of receipts was incomplete. (*Supra*, pp. 9-10; see also Pet. 6, 10.) As to the house at 901 Security Street, the position of the defense was that, though the original acquisition had been improperly omitted in 1943, the amount of the capital gain was, as a matter of law, properly reported in 1946 [11] (R. 252-253, 263); it is not now, and was not at the trial, clear that petitioner claims that his treatment of this item resulted from a "mistake" either of law or of fact, rather than simply a different version of the facts. Consequently, there was only one item, the 85 shares of Moffat County stock which petitioner states he believed to be valueless marketwise (R. 156), as to which the defense rested squarely upon a mistake in failing to include. The trial court, was therefore, correct, as the Court of Appeals points out (R. 370-371), in refusing to give request No. 11, in the form

[11] The trial court charged that this item, properly computed, was reportable as capital gain in 1946. R. 248-249. See the opinion below, R. 371-372.

presented, since it incorrectly assumed evidence and contention of mistake as to *all* the omitted items.

But petitioner insists that the trial court effectively eliminated the issue of wilful intent from the jury's consideration by telling them in the course of the charge (R. 247):

> * * * you may infer, if the amount [of understated income] is large and substantial, that he knew or must have known that he was understating his income.

No presumption as to petitioner's intent was imposed by this sentence. It was simply a recognition of a fact which is derived from common experience, *i.e.*, that a business man will not *normally* be unaware of a *large* discrepancy between his actual income and that which he reports in his return. The inference is, of course, rebuttable, and it is only one circumstance pointing toward wilful intent to evade. It is obvious from the context that this must have been the only interpretation which the jury could have put upon the trial court's language. In earlier portions of the charge (quoted above), the trial judge had pointed out that wilful intent was a necessary element of the offense, and properly explained the essential mental state for wilfulness.

Immediately after the sentence of which petitioner now complains the court described other indicia of wilful intent, in addition to the size of the amount understated, such as petitioner's method of keeping his books and his contradictory

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explanations during the investigation. (R. 247-248.) When the charge is read as a whole, the issue of wilful intent will be seen to have been adequately defined, and the determination of that issue was left entirely to the jury unhampered by any rule of presumptive intent.

2. The trial court instructed the jury that an additional tax would follow as a matter of law if they found that petitioner had failed to report all of his taxable income. (R. 246.) Petitioner points out that he testified that no additional tax was due because he had included items of income in his return by means of the "plugged" figure of $13,894.35 which he subtracted from his expenses, and he contends (Pet. 2-3, 13-14) that the instruction in effect deprived him of a complete defense. The argument is without substance.

In the first place, this was not, as petitioner asserts (Pet. 14), a complete defense, for, as we have shown (*supra*, pp. 8-10) and as is clear from the petition itself (Pet. 5-6), it was never claimed that the two largest items in the Government's list of specific unreported receipts, the Moffat County stock and the gain on the house, had been included in the $13,894.35 "plug". With respect to these two items petitioner's fairly consistent position was that for various reasons they did not constitute reportable income.[12] The properly applicable principles and the Government's evidence, on the

[12] He did at one stage admit that the gain on the house should have been reported. (R. 130, 132.) At that point, he thought that it had been "overlooked", but at no time did he claim that it had been included in the $13,894.35.

other hand, indicated that they should have been reported, and, once the jury were persuaded by the Government's evidence, the additional taxes followed as a matter of law. The trial court's instruction on this phase was, therefore, correct.

Furthermore, the present argument seems little more than an elaborate technicality. During the investigation, petitioner had told the agents that the $13,894.35 figure represented inventory, and he admitted that the various specific items of income had not been included in his return. (*Supra*, pp. 8-9.) At the trial, he testified that the "plug" figure *did* include most of the specific items (*supra*, pp. 9-10), and when faced with his previous statement he attempted a completely incredible explanation (R. 158-163). The question before the jury was whether, as petitioner first stated, the "plug" represented inventory and the items of income had been omitted from the return, or whether, as he later claimed, they had been included in the "plug" and thus in the return. Under the circumstances it must have been perfectly clear to the jury that no additional tax was due if the items involved had been included, in any manner whatsoever, in petitioner's return.

3. Petitioner contends (Pet. 3, 14-17) that the Government's evidence of increases in his net worth was inconclusive, and that the trial court's instruction shifted the burden to him to prove that these increases were not attributable to taxable income. But the net worth evidence was only of corroborative importance. The Government's case was based upon proof of specific items of unreported income.

The sum of these items was approximately the same as the net worth increase for 1946. (*Supra*, pp. 10-11.) The central issue at the trial was whether the specific receipts had actually been included in petitioner's return for 1946 or were required to be reported therein. Petitioner, admitting the receipts, claimed that he had included all which represented taxable income for 1946. The evidence contradicting his testimony (*supra*, pp. 4-10) amply justified the conclusion that the explanation was false. What is important here, however, is that the Government's net worth computation simply corroborated that part of the case which petitioner admitted. Petitioner himself points out (Pet. 5-6, 10, 13-14) that had his explanation of the unreported receipts been accepted, it would have followed that he owed no additional taxes for 1946 and could not have been guilty of an unlawful attempt at evasion. This constitutes an acknowledgment of the plain fact that it was not the amount of the receipts, a fact admitted by petitioner and corroborated by the increase in his net worth, but the explanation of his failure to report them, which presented the decisive problem for the jury's determination.[13]

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[13] The four cases upon which petitioner relies (Pet. 14), in which this Court recently granted certiorari, are clearly distinguishable, for in all of them the Government was forced to rely largely upon the net worth method to prove unreported income. *Friedberg* v. *United States*, No. 18; *United States* v. *Calderon*, No. 25; *Holland* v. *United States*, No. 37; *Smith* v. *United States*, No. 52.

Net worth contentions, presented in circumstances comparable to those of the instant case, are raised in *Brown* v. *United States*, No. 133, *Beaty* v. *United States*, No. 209, and *Strauch*

4. With regard to the capital gain on the house at 901 Security Street, petitioner contends (Pet. 3, 17-19) that the jury was instructed to compensate for an understatement of income and an improper deduction in an earlier year by considering the item as income in 1946. The record does not support the contention.

Petitioner built the house in 1942 or 1943 as one of a group which he intended to sell to the Pueblo Housing Corporation. Since he filed his returns on a cash basis he deducted the expense at that time, but he could not, at the trial, recall how much it had cost him. Instead of selling the house to the corporation he kept it himself, and the corporation deeded the lot to him in 1943. (R. 67-68, 99-100, 102-104, 130, 151, 176-177, 185.) Both Corkish (*supra*, p. 10) and petitioner testified that the consideration for the deed was $6,000 (R. 44, 151), but the books of the corporation were missing and we have already indicated that there was considerable evidence to indicate that the actual consideration was only $1,000.[14] When petitioner eventually sold the property (i.e., house and lot) in 1946 for $11,500 he deducted $6,000 as his original cost in determining the amount of his capital gain. (R. 102-104, 151-152.)

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v. *United States*, No. 215, all pending on petitions for writs of certiorari. The Government is also filing briefs in opposition in those cases.

[14] See footnote 7, *supra*, p. 10. In addition, since, as both petitioner and Corkish testified, the fair market value of both house and lot was $6,000, it is hardly likely that the lot alone would have been transferred to petitioner for $6,000. (R. 46, 151.)

In this state of the evidence, the defense requested an instruction that if the jury found that "the property" at 901 Security Street had been conveyed to petitioner during 1943, "the receipt of the property" was not income for the year 1946. (R. 263.) This was obviously incomplete and misleading since all the evidence was that petitioner had always owned the house and had received only the lot. Instead, the court instructed the jury that if petitioner deducted the cost of building the house in his 1942 return, he could not deduct it again in 1946 in determining the amount of his capital gain. (R. 248-249.) The court did not mention the transfer of the lot, but neither did the defense in its objection to this portion of the instruction (R. 252-253). The objection was based on the twice repeated ground, unsupported by any evidence, that "the *house* was transferred" to petitioner in 1943, and that the $6,000 which he allegedly credited to the corporation in return for the *house* constituted income to him in 1943 and should be excluded in 1946. (R. 252-253; emphasis added.) While the court might perhaps have instructed the jury that the price of the lot (as distinguished from the house) represented income in 1943 and could properly be deducted in 1946, petitioner can hardly complain now since his confusing request (R. 263) and objection (R. 252-253) only served to obscure the matter and to concentrate emphasis on the house alone.[15]

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[15] Furthermore, since the evidence strongly indicated that the price of the lot was only $1,000, petitioner's computation of his capital gain was still much less than it should have been.

In this Court, petitioner, in addition to urging, as he did in the trial court, that the alleged $6,000 constituted income in 1943, also argues, for the first time, that he improperly deducted his construction expenses on the house in 1943 whereas they were properly deductible in 1946. Even if this were correct as a matter of law, there was no evidence of the amount of the construction expenses, for, as has been pointed out (*supra*, p. 18), petitioner testified he could not recall what they were. Furthermore, although construction costs are often capital expenditures, they are ordinary business expenditures in the case of a contractor who, like petitioner, is in the business of building houses for sale. Petitioner always reported them as such, as is clear from the testimony (R. 102-104) and from the work sheet on which he assembled his receipts and expenditures in preparing his 1946 return (R. 307-309).

5. It is also urged (Pet. 4, 19-20) that the trial court should have instructed the jury that the indictment was not evidence of guilt as was requested. (R. 257.) We think it clear that, as the Court of Appeals pointed out (R. 369), the failure to give this specific instruction was not prejudicial to petitioner.

6. (a). Upon the assumption that the Government's case was based entirely upon circumstantial evidence, petitioner contends (Pet. 4, 20-21) that the trial court should have instructed the jury, as requested (R. 260-261), that the evidence must be inconsistent with every reasonable hypothesis but

that of guilt. But in this case the Government relied almost entirely upon specific items of unreported income which were proved by direct evidence. A special instruction on the nature of circumstantial evidence was not required under these circumstances. *Campbell* v. *United States*, 47 F. 2d 70, 71 (C.A. 5th); *Herman* v. *United States*, 48 F. 2d 479, 480 (C.A. 5th); *Carnahan* v. *United States*, 35 F. 2d 96, 104 (C.A. 8th), certiorari denied, 281 U. S. 723; Randall, Instructions to Juries, Secs. 226-227; Branson, Instructions to Juries (3d ed., 1936), Sec. 65.

(b). Petitioner argues (Pet. 4, 21) that the trial court should have read to the jury the statute defining the offense involved, as had been requested (R. 259). We think there can be no doubt that the elements of the offense were adequately defined for the jury in the court's own language. (R. 245-246.) This was sufficient. *Morris* v. *United States*, 156 F. 2d 525, 531 (C.A. 9th); *United States* v. *Pincourt*, 159 F. 2d 917, 919 (C.A. 3d).[16]

(c). Finally, petitioner complains (Pet. 4, 21) that the trial court's definition of reasonable doubt was incorrect. But the language used was approved by this Court in *Miles* v. *United States*, 103 U. S. 304, 309.[17]

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[16] This point is similar to one of the issues presented in the petition for certiorari in *Holland* v. *United States*, No. 37, now pending for argument.

[17] See footnote 16, *supra*.

CONCLUSION

We believe the decision below is correct and that the petition should be denied. However, this Court may wish to withhold action pending decision in *Holland* v. *United States*, No. 37, in view of the similarity of two of the minor points raised, *supra*, p. 21, to issues in the *Holland* case.

Respectfully submitted,

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AUGUST, 1954.

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